

Special Civil Application No 2972 of 1983

Date of decision: 01/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

JAY MITRA CO OPERATIVE HOUSING SOCIETY LTD

vs

STATE OF GUJARAT & ORS.

Appearance:

Shri H.B. Shah, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for Respondents Nos. 1 and Respondent No.3 served

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by the Collector of Ahmedabad (respondent No.2 herein) on 8th November 1982 as affirmed in appeal by the order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 16th March 1983 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, respondent No.2 directed the petitioner to pay a premium in the sum of Rs. 1,02,216.02 ps. by way of premium for conversion of one parcel of land bearing survey No. 297 admeasuring 4 acres 20 gunthas situated in village Vinzol (the disputed land for convenience) from new tenure to old tenure.

2. The facts giving rise to this petition move in a narrow

compass. It appears that the disputed land originally belonged to one Jashbhai Narsinhbhai (respondent No.3 herein). It was a new tenure land. He agreed to sell this land to the petitioner. Thereupon an application was made by the petitioner and respondent No.3 for conversion of the disputed land from its new tenure to old tenure. It appears that such application was made as early as on 10th July 1979. That application remained pending in the office of respondent No.2. In the meantime, an application was moved to the District Development Officer for what is popularly known as N.A. permission under sec. 65 of the Bombay Land Revenue Code, 1879 (the Code for brief). By the order passed by the District Development Officer of Ahmedabad on 13th April 1982, such permission was granted on certain terms and conditions. Its copy is at Annexure A to this petition. By that order an ad hoc premium in the sum of Rs. 59302.50 ps. was levied for proposed conversion from new tenure to old tenure subject to the condition that the difference between the amount fixed as a premium and the ad hoc amount would be paid by the applicants. It appears that in the meantime the Deputy Town Planner submitted his report some time on 23rd May 1980 fixing the market price of the disputed land at the rate of Rs. 15 per share meter. On that basis the price of the land would be in the sum of Rs. 1,22,228. Thereafter, by his order passed on 8th November 1982, respondent No.1 fixed the market price of the disputed land at the rate of Rs. 25 per square meter, totalling Rs. 2,04,432.04 ps. Apropos, respondent No.2 fixed the ad hoc premium at the rate of 50% thereof in the sum of Rs. 1,02,216.02 ps. Its copy is at Annexure B to this petition. That aggrieved the petitioner herein. It carried the matter in revision before respondent No.2 under sec. 211 of the Code. By the order passed by and on behalf of respondent No.1 on 16th March 1983, the revisional application came to be rejected. Its copy is at Annexure C to this petition. That aggrieved the petitioner. It has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure B to this petition as affirmed in revision by the order at Annexure C to this petition.

3. It transpires from the impugned orders at Annexures B and C to this petition that the market rate of the disputed land was fixed as prevalent in 1982. The grievance voiced by and on behalf of the petitioner is to the effect that the application for conversion from new tenure to old tenure was made as early as on 10th July 1979. Its copy is at Annexure D to this petition. The market price of the land ought to have been fixed as it was prevalent on or around the date of the application at Annexure D to this petition and not in or around 3 years thereafter. As against this, learned Assistant Government Pleader Shri Patel has urged that the material date for the purpose would be the date of the order and not the date of the

application.

4. As rightly relied on by learned Advocate Shri Shah for the petitioner, a reference deserves to be made to the ruling of this Court in the case of Ashutosh Sarkari Karmachari Co-operative Housing Society Ltd. v. State of Gujarat and another reported in 1992(2) 36(2) G.L.R. 1419. In that case, the application for allotment of land under sec. 23 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) was involved. In that case, the market price of the allotted land was fixed as prevalent on the date of allotment and not on the date of the application. Keeping in mind the delay in disposal of the application for nearly 3 years, this Court held that the market price should be fixed as prevalent in or around the date of allotment. By analogy, the aforesaid ruling of this Court will be applicable in the present case. It becomes clear from a copy of the application at Annexure D to this petition that it was made as early as on 10th July 1979. As transpiring from the revisional order at Annexure C to this petition, the Deputy Town Planner had submitted his report regarding the market price of the land as early as on 23rd May 1980. The delay in disposal of the application at Annexure D to this petition was at the end of respondent No.2. It is not the case of the respondents that the petitioner was in any way responsible for such delay. In that view of the matter, the market price as opined by the Deputy Town Planner in his report of 23rd May 1980 ought to have been accepted.

5. The same result will follow even if the question is examined from a different angle. The decision of respondent No.2 at Annexure B to this petition was based on one circular issued by the State Government on 26th April 1982. It cannot be gainsaid that such circular would be in the nature of administrative or executive instructions. It is a settled principle of law that administrative or executive instructions have no retrospective operation. Such executive instructions could not have governed the fate of the application made much before such date. The fate of the application at Annexure D to this petition should have been decided in the light of the prevalent policy around that time.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure B to this petition as affirmed in revision by the impugned order at Annexure C to this petition cannot be sustained in law. It has to be quashed and set aside.

7. Ordinarily, the matter ought to have been sent back to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. However, since the entire material is on

record and since the land involved is too small to brook any further loss of time on the part of the authorities concerned, I have thought it fit to dispose of this matter at this stage itself. It maybe noted that it is not the case of the respondents that the petitioner is not entitled to claim conversion of the disputed land from new tenure to old tenure. It transpires from the order at Annexure C to this petition that the Deputy Town Planner, by his report of 23rd May 1980 fixed the market price of the disputed land at Rs. 15 per square meter. Apropos, he fixed the premium amount at the rate of 50% thereof at Rs. 61,114.50 ps. By the order at Annexure A to this petition, the ad hoc amount was fixed at Rs. 59302.50 ps. The petitioner has averred in the petition that it has paid the amount of the ad hoc premium in terms of the order at Annexure A to this petition. It would therefore be liable to pay only the difference amount in terms of the condition contained in the order at Annexure A to this petition. The difference would be Rs. 1812. The petitioner is required to pay up this amount to the government. Since the petitioner has kept that amount with it and the State Government is deprived of the use of the amount, the petitioner should be settled with the liability of interest on that amount. The total should therefore come to something like Rs. 3000 as rounded off. The petitioner therefore deserves to be directed to deposit in this Court the amount of Rs. 3000/- being the difference between the premium for conversion of the disputed land from new tenure to old tenure as fixed and the ad hoc amount of premium fixed by the order at Annexure A to this petition.

8. In the result, this petition is accepted to the aforesaid extent. The order passed by the Collector at Ahmedabad on 8th November 1982 at Annexure B to this petition as affirmed in revision by the order passed by and on behalf of the State of Gujarat on 16th March 1983 at Annexure C to this petition is quashed and set aside. The petitioner is directed to deposit in this Court on or before 16th February 1996 an amount of Rs. 3000/- being the difference between the premium fixed and the ad hoc premium paid in terms of the order at Annexure A to this petition. On deposit of such amount by the petitioner, the amount will have to be remitted to the State Government by means of a cheque drawn in the name of the Secretary, Revenue Department, at at Gandhinagar. On payment of such amount, conversion of the disputed land from new tenure to old tenure will be deemed to have been effected. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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